



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169333

PRELIMINARY RECITALS

Pursuant to a petition filed October 07, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on November 19, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the request for physical therapy services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Waukesha County.

2. On August 20, 2015, [REDACTED], on behalf of Petitioner, submitted a request for prior authorization of 52 sessions of physical therapy over 26 weeks, beginning September 16, 2015, at a cost of \$10,920.00. (Exhibit 3, pg. 9)
3. The long term goal of therapy is to, “maintain head control in midline when uprights for 3 seconds consistently, with trunk support” and the short term goals of the requested therapy appear to be as follows:

- a. Lift his head to 30 degrees of neck extension 2 times in 30 seconds after cues, when held POEs
- b. Demonstrate emerging head lift or righting when rolled from sidelying to prone with moderate assistance
- c. Maintain B UE WB in modified four-point for at least 5 seconds after support is removed.

(Exhibit 3, pg. 12)

4. On September 9, 2015, DHS sent [REDACTED] a letter indicating that there were some PA errors and asking [REDACTED] to:
 - a. Discuss how goals and rehabilitation potential are supported by the frequency/duration requested;
 - b. Provide evidence of significant functional progress in the last six months
 - c. Provide evidence of skills gained in therapy carrying over to other settings within six months.

(Exhibit 3, pgs. 26-28)

5. On September 14, 2015, [REDACTED] [REDACTED] submitted another prior authorization request, again seeking 52 sessions of physical therapy over 26 weeks, beginning September 16, 2015, at cost of \$10,920.00. (Exhibit 3, pg. 29)
6. On that same date, the Petitioner’s physical therapist, Jill Boesl, submitted a letter in response to the September 9, 2015 PA error messages. (Exhibit 3, pg. 35)
7. On September 24, 2015, DHS sent the Petitioner and [REDACTED] [REDACTED] notices, advising them that the request for services was modified. DHS approved 26 sessions over 26 weeks for the period of September 16, 2015 to March 17, 2016. (Exhibit 3, pgs. 36-41)
8. The Petitioner’s mother, on behalf of Petitioner, submitted a request for fair hearing that was received by the Division of Hearings and Appeals on October 7, 2015. (Exhibit 1)
9. The Petitioner is three years old. His diagnoses are as follows:

SOX2 Gene mutation
 Anophthalmia (absence of eyes)
 Congenital hypotonia
 Torticollis
 Plagiocephaly (flat head syndrome)

Deafness
 G-tube fed, due to history of aspiration
 Respiratory issues.

(Exhibit 3, pg. 15)

10. Petitioner does not walk, talk or crawl, and he suffers from seizures. (Testimony of Petitioner's mother)
11. Petitioner is approved to receive 120 hours of private duty nursing. The plan of care, dated August 24, 2015, indicates that the nurse is to follow through with therapy suggestions from the physical therapist, including sitting the Petitioner in a tumbleform chair, on a daily basis, for as long as tolerated, and placing the Petitioner on his tummy, on a daily basis, for as long as tolerated. (Exhibit 2)

DISCUSSION

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence that the requested level of therapy meets the approval criteria. Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152.

Prior authorization is required for physical therapy services in excess of 35 treatment day “per spell of illness.” Wis. Admin. Code §DHS 107.16(2)(b)

It is undisputed that Petitioner is a three year old child with a number of impairments, including blindness, deafness, hypotonia and torticollis. The issue in dispute is what level of treatment is medically necessary and appropriate. Petitioner argues that twice weekly physically therapy is necessary; DHS argues that once weekly therapy is sufficient.

The DHS consultant indicates in her letter that the Petitioner has received physical therapy since 2013, but has not shown significant functional improvement, so there is insufficient evidence to show that a second session of physical therapy will do anything improve the Petitioner’s condition. The DHS consultant also opined that because the Petitioner is to receive daily, supportive physical therapy services from his private duty nurse, that once weekly physical therapy to monitor, update, and progress the Petitioner’s home exercise plan is more appropriate.

The Petitioner’s mother testified that she is a mother of three, and can’t do everything. The Petitioner’s mother testified that she doesn’t want to do therapy with the Petitioner, because she’d rather just be a mom and cuddle her child. The Petitioner’s mother testified that she does not, on her own, implement the home exercise plan.

The feelings of Petitioner’s mother are very understandable to anyone who has children whether those children are typically developing children, or children with special needs. There never seems to be enough time to do everything that needs to get done and life can be overwhelming. Unfortunately, under the administrative rules, specifically, Wis. Admin. Code §101.03(96m) 7., the frequency of therapy cannot be increased, because it is too inconvenient for Petitioner’s family to follow the home exercise program.

Thus, we must turn to the documentation provided.

It is very clear that the Petitioner's medical condition is complex and that he has certain developmental delays, since he does not walk, talk, or crawl. It is also clear that he needs some type of therapy to address those deficits.

DHS is correct that in reviewing the documentation submitted by [REDACTED], it is difficult to ascertain what subjectively measurable, functional, progress the Petitioner has made in the last two years of therapy or in the last six months. For example, the progress note states that the Petitioner met a short term goal of maintaining his head in midline when supine for 20 seconds with sensory input on his left side, but it does not state where he started when the goal was established. Was he unable to do it at all? Was he only able to do it for 10 seconds? In addition, it is difficult to tell whether the progress Petitioner has made is attributable to the physical therapy he received, or whether it is attributable to his own schedule of development. The greater issue, however, is whether the Petitioner needs a second session of skilled physical therapy, when he is supposed be receiving daily PT intervention from his nurses.

Under Wis. Adm. Code. §DHS 101.03(96m), paragraph 6, the requested services may not be duplicative of services the patient is receiving elsewhere.

The long term goal of therapy is to get the Petitioner to hold his head up, in midline, for three seconds, when in an upright position. Given that the Petitioner is supposed to be following a daily home exercise program and is to be receiving daily physical therapy from his private duty nurses, it is difficult to support a second weekly session of physical therapy to attain that long term goal. [REDACTED] has not made clear how a second weekly session of physical therapy will further the Petitioner's goals. On the contrary, Petitioner's physical therapist indicated that the second weekly session would be a monitoring check, to refine what was taught to Petitioner/his caregivers. However, this is the purpose of the weekly physical therapy that DHS did approve.

Based upon the foregoing, it is found that [REDACTED], acting on behalf of Petitioner, has not, at this time, shown that twice weekly physical therapy is necessary.

Petitioner's parents should note that if the Petitioner's condition changes, or if [REDACTED] can provide other documentation to support its request for services, that [REDACTED] can submit a new request for increased physical therapy services.

CONCLUSIONS OF LAW

DHS correctly modified the request for therapy to once weekly sessions.

THEREFORE, it is **ORDERED**

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

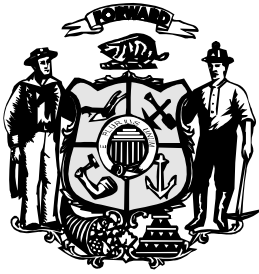
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of December, 2015

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 9, 2015.

Division of Health Care Access and Accountability